IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3580 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATJI SHAKRAJI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3580 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MR AY KOGJE, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged the detention order passed against him by the detaining authority, by its order dated 6.2.2004

under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is detained as a "bootlegger" under PASA. Along with the order, the petitioner has also been served with the grounds of detention.

2. In the grounds of detention, there is a reference about one criminal case, which is pending against the petitioner. The aforesaid case is registered against the petitioner under the Bombay Prohibition Act. It is alleged that, the petitioner is dealing in foreign liquor. The detaining authority, after recording subjective satisfaction and after recording the statements of the witnesses, whose names have not been disclosed to the petitioner, has detained him under PASA. The said detention order is challenged by the petitioner by way of this petition.

3. Learned advocate for the petitioner submitted that, only one solitary case is registered against the petitioner under the Bombay Prohibition Act. It is submitted that, from the aforesaid case, it cannot be said that the activity of the petitioner is such which is injurious to public health or that he has violated any public order by committing offence under the Bombay Prohibition Act. To substantiate his say, the learned advocate for the petitioner has relied upon the decision of this Court in the case of Sandip Omprakash Gupta v. State of Gujarat reported in 2004(1) GLR 864 in which this Court has held that, on the basis of a solitary incident, resort to preventive detention cannot be made, as such solitary case can be considered as a violation of law and order on the part of detenu and not the public order.

4. Learned advocate for the petitioner has further submitted that, at the relevant time, when the detention order was passed by the authority, the petitioner was already in judicial custody. It is further submitted that, the detaining authority has not stated in the order as to on what basis it has reached the subjective satisfaction that on presenting the bail application the petitioner will be released on bail. However, in this case, it is not necessary to examine the second point urged by the petitioner, and since I am bound by the view taken by the learned Single Judge in the case of Sandip Omprakash Gupta (supra), in view of the aforesaid ground about solitary incident of a registered case under the Bombay Prohibition Act, only on the basis of the aforesaid submission about the solitary case alleged against the petitioner, which can be taken care in the

ordinary criminal law, this petition is required to be allowed.

5. In view of what is stated above, this petition is allowed. The order of detention dated 6.2.2004 is quashed and set aside. The detenu, Bharatji Shakraji Chauhan, is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

syed/